

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE ESTABLISHMENT BY PLEASURE CRAFT MARINA))))	ADMINISTRATIVE CAUSE NUMBER: 11-011P

**REPORT OF HEARING OFFICER, INCLUDING FINDINGS
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION**

1. PETITION FOR RATE ESTABLISHMENT BY PLEASURE CRAFT MARINA

Shanon Mundy (*Mundy*), Client Services Manager at Pleasure Craft Marina (*PCM*) submitted a petition for rate establishment (*Initial Petition*) in correspondence received on January 3, 2011 and supplemented on January 12, 2011 relating to a marina operated on Monroe Reservoir. After filing its Initial Petition, PCM failed to comply with Information Bulletin #20 (Second Amendment), a nonrule policy document approved by the Commission and published on the INDIANA REGISTER database website as 20091125-IR-312090919NRA (*IB #20*).

In a “Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission” dated June 9, 2011, the hearing officer concluded that the Initial Petition “cannot be processed due to PCM’s failure to comply with the notice requirements.” Thereafter, based upon the assurance of PCM’s new manager, Steve Patterson, that PCM would fully comply with the requirements of IB #20, the hearing officer recommended that the Natural Resources Commission (*Commission*) defer final action and provide PCM “an opportunity to fulfill the obligations of IB #20” enabling the hearing officer to “present the Commission with a full and complete report for consideration in November 2011.” *See Addendum to Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission Issued June 9, 2011.* The Hearing Officer’s recommendation was accepted by the Commission at its July 19, 2011 meeting. *See Natural Resources Commission Minutes of July 19, 2011 Meeting.*

On August 12, 2011, PCM submitted a revised Petition for Rate Schedule Change (*Revised Petition*) that sought rates for 17 x 48 and 17 x 40 covered slips that were less than the rates requested in PCM’s initial Petition but in all other respects was the same. The Revised Petition is attached as Exhibit A and incorporated by reference. PCM’s Revised Petition was shared with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*).

2. SCOPE OF REVIEW

PCM's Revised Petition is governed by IB #20. The Commission reflected that the purpose of the information bulletin was to implement an informal process for the review of ratemaking recommendations for resorts and marinas under lease with the Department.

On January 12, 2011, when PCM filed its Initial Petition, the Division of Hearings notified PCM of the assigned administrative cause number, the identity of the hearing officer and provided the hearing officer's electronic mail address for inclusion in the notice required to be provided by PCM to its slip and buoy renters.

IB #20 required PCM to issue notice to "each slip renter or buoy renter" of the petition for rate establishment by March 1, 2011, and to "provide the Hearings Division with a copy of the notice and a listing that includes the names and addresses of persons notified..." not later than March 15, 2011. The history associated with PCM's Revised Petition made it impossible to comply with the exact dates as set forth in IB #20 but it was possible to comply with the established time frames.

PCM's Revised Petition was submitted on August 12, 2011. On August 25, 2011, PCM issued notice to slip and buoy renters containing the information required by IB #20, particularly that PCM patrons were provided the opportunity to offer comments and/or request a public hearing regarding the rate establishment petition. The notice provided specifically that comments and requests for public hearing were required to be received on or before September 15, 2011 at the hearing officer's electronic or US Postal Service address and advised that a public hearing would be conducted only if at least 10% of the slip and buoy renters requested a public hearing.

Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate request were available for the public to review at the lessee's business office, during normal business hours. A copy of this information was also available for the public to review at the Department. In accordance with the existing lease agreements, the Department is to analyze comparable facilities to compare rates with those sought by the lessee. Information used in the analysis is to be available for inspection at the Department in Indianapolis.

There were no written comments or requests for public hearing received.

The report prepared by the hearing officer is to include written findings with respect to the requested rates and a proposal to the Commission with respect to recommendations to the U. S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the Department, and any other person who requests a copy.

The Commission may either recommend approval of the rates, disapproval of the rates, or approval of rates in an amount less than requested by the lessee. Recommendation for favorable consideration of rates will not be withheld unless, in the opinion of the Commission, the proposed rates exceed fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

3. Written Comments

The opportunity for the public to submit written comments extended until September 15, 2011. During this time, no written comments were received.

4. Recommendation by the DNR Division of Parks and Reservoirs

As anticipated in IB #20, Gary Miller (*Miller*), Assistant Director of Inns and Concessions for the Department completed a comparative review of slip rates associated with PCM's Revised Petition considering the rates of Kent's Harbor Marina on Brookville Reservoir, Patoka Lake Marina and Hoosier Hills Marina on Patoka Reservoir and Fourwinds Resort and Marina on Monroe Reservoir.

Miller stated in part, "Although all of these marinas offer different services and amenities, they do represent a good comparison for marinas in Indiana. As can be seen, the rates of Lake Monroe Marina [PCM] are within acceptable ranges." Miller concludes with his endorsement that the rates requested by PCM be given "permanent status." Miller's comparison is attached as Exhibit B and incorporated by reference.

5. FINDINGS AND PROPOSAL BY THE COMMISSION'S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by IB #20, which specifies that the lessee "shall provide written notice, by personal delivery, U.S. first class mail or by electronic mail, to each slip renter or buoy renter that the lessee is requesting a rate establishment or increase associated with slips or other mooring facilities, including buoys and docking stations."

While the Revised Petition identifies the rates for PCM's 12 x 28 foot covered and 17 x 32 foot uncovered slips and side ties the rates for these slips will not change as a result of this proceeding. The Revised Petition will only affect the rates associated with the 17 x 48 foot covered, 17 x 40 foot covered and 12 x 32 foot covered slips, which were assigned interim rates by the Department for the 2011 boating season.

For the 12 x 32 foot covered slip OCM is seeking formal establishment of the \$2,495.00 rate originally approved as an interim rate by the Department. It is important to note; however, that the Department approved interim rates for PCM's 17 x 48 foot covered slips at \$4,900.00 and for the 17 x 40 foot covered slips at \$4,600.00 and the rates sought

by PCM for formal establishment by the Commission are at least \$1,000.00 less than the approved interim rates.

The Department's analysis confirms that the rates sought for formal establishment by PCM for the 17 x 48 foot covered, 17 x 40 foot covered and 12 x 32 foot covered slips are reasonable.

B. Proposal

The Hearing Officer recommends that the rates sought by PCM in its Revised Petition be formally established as requested. PCM's rates, including existing rates and the rates recommended for approval herein, are reflected in Exhibit C, which is attached and incorporated by reference.

Dated: October 24, 2011

Sandra L. Jensen
Hearing Officer

Service List:

cc: Gary Miller, DNR, Division of State Parks and Reservoirs
Steve Patterson, Pleasure Craft Marina/Lake Monroe Marina

EXHIBIT A

**To: Natural Resources Hearing Commission
Sandra L. Jensen, Admin. Law Judge**

Subject: Petition for Rate Schedule Change

Effective June 14, 2011, Lake Monroe Marina is requesting consideration of the following rates for slips at this Marina:

17 x 48 Covered \$ 3,800
17 x 40 Covered \$ 3,600
12 x 32 Covered \$ 2,495
Side Tie Slips \$ 1,200
12 x 28 Covered \$ 2,495
17 x 32 Uncovered \$2,500

This request/petition supercedes the previous Slip Rates requested in January of 2011
Lake Monroe Marina
5505 E St Rd 446
Bloomington, IN 47401
lakemonroemarina@yahoo.com
812-837-9394

EXHIBIT B

October 4, 2011

To: Sandra L. Jensen
Hearing Officer/Administrative Law Judge
Natural Resources Commission

Fr: Gary Miller
Assistant Director
Indiana State Parks and Reservoirs

Re: Lake Monroe Marina Rate Comparisons

Enclosed with this memo is the rate comparison chart for Lake Monroe Marina. This chart compares the rates with Kent's Harbor Marina on Brookville Lake, Patoka Lake and Hoosier Hills Marinas on Patoka Lake, as well as Fourwinds Resort and Marina on Monroe Lake.

Although all of these marinas offer different services and amenities, they do represent a good comparison for marinas in Indiana. As can be seen, the rates of Lake Monroe Marina are within acceptable ranges. These rates had previously been granted interim rate status and rates had been compared at that time, however, for this rate request, the rates were again reviewed and verified. The Division of State Parks and Reservoirs supports these rates being given permanent status at this time.

Lake Monroe Marina 2011							
Slip Rate Comparison							
Lake Monroe Marina rates		Kent's Harbor Marina		Patoka Lake Marina		Fourwinds Resort and Marina	
12' x 28' covered annual	\$2,495	30' open annual	\$2,525	12' x 28' covered annual	\$2,200	12' x 24' covered annual	\$2,811
12' x 32' covered annual	\$2,495	30' open annual	\$2,525			12' x 30' covered annual	\$3,923
17' x 40' covered annual	\$3,600	40' open annual	\$3,175	16' x 40' covered annual	\$3,625	15' x 42' covered annual	\$5,492
17' x 48' covered annual	\$3,800	50' open annual	\$3,615			15' x 48' covered annual	\$6,277
17' x 32' open annual	\$2,500	30' open annual	\$2,525	17' x 36' open annual	\$1,945	13' x 32' open annual	\$2,763
side tie slips	\$1,200	20' open annual	\$2,190				
Hoosier Hills Marina							
12' x 24' covered annual	\$2,000						
12' x 30' covered annual	\$2,500						
14' x 30' covered annual	\$2,750						
14' x 30' open annual	\$1,800*	double berth/ 2 boats share slip					

EXHIBIT C2012 Lake Monroe Marina
Rates

12' x 28' covered annual	\$2,495
12' x 32' covered annual	\$2,495
17' x 40' covered annual	\$3,600
17' x 48' covered annual	\$3,800
17' x 32' open annual	\$2,500
side tie slips	\$1,200